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In re Application of	:	DECISION ON
LARSSON et al	:	
Application No.: 10/030,931	:	
PCT No.: PCT/SE00/01306	:	PETITION UNDER
Int. Filing Date: 19 June 2000	:	
Priority Date: 09 July 1999	:	37 CFR 1.181
Attorney's Docket No.: P01,0579	:	
For: IMPLANTABLE HEART SIMULATOR	:	

This Decision is in response to applicants' "PETITION UNDER 37 C.F.R. 1.181(a) REQUESTING WITHDRAWAL OF HOLDING OF ABANDONMENT" filed on 24 March 2003 that the above-identified application was improperly held abandoned because the declaration was timely filed. The petition requests the withdrawal of the abandonment mailed on 06 March 2003. The check for \$130.00 submitted on 06 August 2002 in response to the Notification mailed on May 29, 2002 was inadvertently credited back to Deposit Account 501519. However, Deposit Account 501519 has now been charged the \$130.00 fee as stipulated by the Notification.

BACKGROUND

On 19 June 2000, this international application was filed, accompanied by, *inter alia*, a petition to revive and the basic national fee. An executed declaration or oath was not submitted at such time as required by 35 U.S.C. 371(c)(4).

On 17 May 2002, in a decision from this Office the petition to revive was granted.

On 29 May 2002, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration complying with 37 CFR 1.497(a) and (b), identifying the application by international application number and international filing date must be furnished within the time period set forth. The notification set two (2) months time limit or 32 months from the priority date for the application, whichever is later to respond.

On 06 March 2003, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) which indicated that applicant had failed to respond to the notification of MISSING REQUIREMENTS, mailed 05/29/2002 within the time period set therein; accordingly the application was abandoned.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 06 March 2003, petitioner has submitted the instant petition requesting withdrawal of the Notice of Abandonment. In support of the petition, petitioner has provided a copy of the returned/stamped receipt card acknowledging a receipt date of 31 July 2002.

DISCUSSION

The present petition was accompanied by a copy of the original postcard which was sent to the United States Designated/Elected Office (DO/EO/US). The postcard lists the item submitted on 31 July 2002 and it indicates, *inter alia*, that an executed declaration was received on such date. Petitioner states that the papers accompanying the present petition are a copy of the response to the Notification of Missing Requirements.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicants' postcard receipt serves as *prima facie* evidence of receipt of the listed item on 31 July 2002 by the USPTO, i.e., the execution declaration was received on such date.


In addition, the certificate of mailing under 37 CFR 1.8 is valid for the declaration and can be used as a basis for a timely filing in response to the Notification of Missing Requirements mailed on 29 May 2002.


Accordingly, petitioner's response- the declaration filed on 31 July 2002- is considered timely. Accordingly, the instant application has been improperly abandoned.

DECISION

Applicants' request to withdraw the "NOTIFICATION OF ABANDONMENT" is GRANTED. The NOTIFICATION OF ABANDONMENT, mailed 06 March 2003 has been VACATED.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision, that is, for issuance of a Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying a 35 U.S.C. § 371 date of 31 July 2002.


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